



1 officers. Plaintiff Trinita Farmer (“Plaintiff”) is the Decedent’s mother. According to her  
2 lawsuit, the LVMPD officers violated her Fourteenth Amendment right to a familial  
3 relationship with her adult son.

4 Because LVMPD officers were involved in the Decedent’s passing, LVMPD  
5 conducted a thorough and comprehensive investigation into the incident. All of the factual  
6 evidence obtained during the investigation has been provided to the Plaintiff. In addition,  
7 LVMPD has produced all policy changes, allowed testimony regarding any and all  
8 discipline the officers received, and produced all related training. The only tangible items  
9 not produced by LVMPD related to the subject incident are: (1) LVMPD’s Critical Incident  
10 Report Team’s report (“CIRT Report”); (2) documents and tangible items from LVMPD’s  
11 Critical Incident Review Process (“CIRP”); and (3) defendant Kenneth Lopera’s compelled  
12 CIRT statement.

13 The CIRT Report and CIRP documents are intertwined. LVMPD takes its critical  
14 incident investigations seriously. As such, it promises its participants and investigators  
15 confidentiality to ensure frank and candid discussions regarding LVMPD’s internal policies  
16 and procedures. At the conclusion of the investigation, the involved LVMPD investigators  
17 deliberate and determine whether any LVMPD policies and/or practices were violated and  
18 whether any modifications or changes are necessary to existing policies. The CIRT  
19 conclusions are then presented during the CIRP process. LVMPD designed this entire  
20 process with the Deliberative Process Privilege in mind. Because Plaintiff has all of the  
21 documents relied upon by CIRT and CIRP, LVMPD has satisfied its disclosure obligations  
22 under the law.

23 With respect to defendant Lopera’s CIRT statement, LVMPD has protected the  
24 statement due to criminal charges levied against Lopera and the threat of future federal  
25 criminal charges. Lopera has invoked his Fifth Amendment right with respect to the  
26 statement. LVMPD has informed Plaintiff it will produce the statement if Lopera agrees or  
27 this Court orders its production.

1     **II. FACTUAL AND PROCEDURAL BACKGROUND**

2       **A. RELEVANT FACTS**

3           **1. The Subject Incident**

4       On May 14, 2017, the Decedent approached LVMPD officers Lopera (“Lopera”) and  
5 Ashley Lif (“Lif”) at the Venetian Hotel & Casino. The Decedent complained that people  
6 were following him and then ran from the officers into an “employee only” area of the  
7 Venetian. Lopera followed the Decedent outside of the Venetian and into the street.  
8 Believing that the Decedent was attempting to carjack a passing vehicle, Lopera attempted  
9 to take the Decedent into custody. Lopera and the Decedent eventually ended up on the  
10 ground where Lopera placed the Decedent in a neck restraint. After Lopera initiated the  
11 neck restraint, Sergeant Crumrine arrived on scene. About thirty seconds after Crumrine  
12 arrived, officers Tran and Flores arrived. Crumrine, Tran, and Flores had no information as  
13 to what had occurred prior to their arrival. Pursuant to their training, the late-arriving  
14 officers immediately intervened by issuing orders and physically assisting Lopera with the  
15 handcuffing of the Decedent. About 70 seconds after Crumrine arrived and 40 seconds after  
16 Tran and Flores arrived, the Decedent was successfully handcuffed. It is undisputed that all  
17 officers (including Lopera) ceased using any force the moment handcuffing was complete.  
18 After handcuffing, the officers realized that the Decedent was unresponsive and began CPR  
19 efforts. Unfortunately, he passed away. The parties dispute the cause of death.

20           **2. LVMPD’s Internal Investigations into the Event**

21       On the date of the subject incident, LVMPD had detailed policies and practices  
22 regulating internal investigations and internal evaluations concerning officer involved deaths  
23 and other critical incidents. The purpose of these policies is to improve the internal and  
24 external review process while simultaneously respecting the personal rights of officers and  
25 the deliberations of LVMPD’s top highest ranking officials. The following briefly addresses  
26 the policies and procedures that were utilized regarding the subject case.

27

**a. The FIT and CIRT Investigations**

LVMPD has two distinct tracks of review. The first track is conducted by LVMPD’s Force Investigation Team (“FIT”). See Sheriff Lombardo Declaration attached as **Exhibit A** at ¶9. The purpose of the homicide investigation is to gather all available information and evidence to assist the District Attorney’s Office in determining whether any criminal conduct occurred during the critical incident. *Id.* at ¶10, see also LVMPD policy 5/109.02 attached as **Exhibit B.<sup>1</sup>** In the Farmer case, Det. Trevor Alsup was the lead FIT investigator.<sup>2</sup> Ex. A at ¶9.

The second track of review is handled by LVMPD’s Critical Incident Review Team (“CIRT”). Ex. A at ¶10. The purpose of the CIRT investigation is purposefully distinct from the FIT team. *Id.* CIRT is a team of full-time employees who conduct a mandatory investigation into all critical incidents. CIRT was specifically created with the Deliberative Process Privilege in mind. *Id.* at ¶3-6. The team and its purpose is designed to allow for candid and honest dialogue within LVMPD to allow for the creation or modifications of LVMPD’s policies and training. *Id.* at ¶10. In other words, the purpose of CIRT is to act as a self-critical process to assist in improving and evaluating LVMPD’s policies and training. Thus, the FIT investigation is a traditional investigation looking at criminality, while the CIRT tract is an “administrative” evaluation of the incident.

Although the FIT and CIRT investigations are distinct and independent, there is obviously some commonality between the two processes. Ex. A at ¶11. LVMPD policy establishes the general protocol for both. Once a critical incident occurs, it is the responsibility of any officers on the scene to secure the scene and immediately notify LVMPD communications and a supervisor. *Id.* at ¶12. The first supervisor on scene

<sup>1</sup> LVMPD Post Use of Force Policy 5/109.01. This policy is authenticated in the Declaration of Sheriff Lombardo at Ex. A at ¶10.

<sup>2</sup> All documents created by Det. Alsup and his FIT report have been produced in this litigation. Declaration of Craig R. Anderson attached as **Exhibit C**.

1 assumes responsibility as the “Incident Commander.” *Id.* at ¶13. In this capacity, the first  
2 supervisor addresses the most immediate and urgent needs, such as directing medical  
3 attention to those who need it and continuing security of the scene. In conjunction, the first  
4 supervisor is directed to obtain a “Public Safety Statement” from officers. *Id.* The public  
5 safety statement consists of responses to a pre-defined series of questions which are as  
6 follows:

- 7       1.     Is anyone injured? If so, where are they located?
- 8       2.     Are there any outstanding suspects? If so, what is their description,  
9              direction and mode of travel? How long have they gone? What crime(s) are  
9              they wanted for? What weapons are they armed with?
- 10      3.     Were you involved in an officer involved shooting?
- 11      4.     Approximately where were you when you fired the rounds?
- 12      5.     Approximately how many rounds did you fire and in what direction  
12              did you fire them?
- 13      6.     Do you know if any other officers fired any rounds?
- 14      7.     Is it possible the suspect fired rounds at you? If so, from what  
15              direction were the rounds fired?
- 16      8.     Are there any weapons or evidence that needs to be  
16              secured/protected? Where are they located?
- 17      9.     Are you aware of any witnesses? If so, what is their location?

18       The information acquired in the Public Safety Statement is consistent with the initial  
19       objectives and responsibilities of the first supervisor: (1) determine the number and identify  
20       of those needing medical attention; (2) determine information about suspects who are not  
21       accounted for; and (3) gather information necessary to secure the scene for further  
22       investigation. *Id.* at ¶14.

23       While the first supervisor is performing these tasks, LVMPD Communications  
24       Section is responsible for notifying the personnel who are to respond to the scene. Among  
25       others, FIT and CIRT are notified. *Id.* at ¶15. Once all essential personnel are on scene, an  
26       initial briefing is held. Both FIT and CIRT attend the initial briefing. *Id.* at ¶¶16-17.

1       Following that, FIT coordinates a walk-through of the scene with the involved  
2 officer. *Id.* at ¶17. If there is more than one officer involved, multiple walk-throughs will be  
3 conducted. The walk-through is designed to identify locations where physical evidence  
4 might be found and to provide the FIT investigators with a general understanding of the  
5 scene. *Id.* at ¶17. The walk-throughs are not recorded. CIRT is excluded from the walk-  
6 through procedure, but is briefed on it by the homicide investigators. *Id.* CIRT is also given  
7 an opportunity to perform its own walk-through after FIT. *Id.* At that point, the  
8 responsibilities and protocol of FIT and CIRT differ. *Id.* at ¶18. FIT continues its  
9 investigation until completion and then presents the information to the District Attorney's  
10 Office. CIRT's involvement remains solely internal.

11       The critical differences between FIT and CIRT procedures are two-fold. First, the  
12 purpose and objective of the FIT process is to gather information necessary to determine  
13 whether any conduct of an officer involved in the critical incident constitutes a criminal act.  
14 *Id.* at ¶19. The purpose and objective of the CIRT process is to evaluate the application,  
15 misapplication, lapse or neglect of training, policies and procedures in order to determine  
16 whether modifications of any internal rules or practices are required. *Id.* And, second,  
17 given the criminal nature of the FIT process, officers are - and must be - afforded the right to  
18 decline to submit to an interview. *Id.* at ¶19. On the contrary, given the administration  
19 nature of the CIRT process, officers involved in a shooting are compelled to submit  
20 themselves to an interview as they are in the best position to assist in the improvement of  
21 internal procedures. *Id.* at ¶20. Officers face termination if they refuse to give a CIRT  
22 statement. FIT is required to share all of its information with CIRT. CIRT, on the contrary,  
23 is strictly prohibited from sharing compelled information from involved officers with FIT.  
24 *Id.*

25       Once FIT's investigation is complete, it turns its FIT Report and accompanying  
26 evidence to the District Attorney's Office for review. The District Attorney then determines  
27

1 whether criminal charges are necessary and then it holds a Fatality Review Board to make  
2 its findings public.

3 After the District Attorney makes its final decision and releases the FIT file back to  
4 LVMPD, the CIRT team finishes its internal investigation. The CIRT team uses the FIT  
5 Report and the statements CIRT compelled from involved officers. After obtaining all  
6 factual evidence, the CIRT team then creates its CIRT Report. *Id.* at ¶24. The purpose of  
7 the CIRT Report is to report the facts of the incident and then analyze the facts for potential  
8 tactical errors, training errors, and/or policy violations. The CIRT team then recommends to  
9 the sheriff any new training and/or new policies it believes may be necessary and/or  
10 beneficial to LVMPD. *Id.* at ¶26; Ex. B. The CIRT team members are assured of the  
11 confidentiality of their reports and forbidden to disseminate the report. *Id.* at ¶26.  
12 Obviously, the reason behind this confidentiality is to ensure the CIRT team is candid and  
13 honest regarding their evaluation and not concerned with potential legal or internal fallout  
14 resulting from their decisions/opinions. Thus, the goal of the CIRT Report is to candidly  
15 evaluate LVMPD's policies and procedures, identify potential problem areas, and make  
16 recommendations to the sheriff regarding policy and training. *Id.*

17 **b. The Critical Incident Review Process**

18 After the CIRT Report is completed, the next step is the Critical Incident Review  
19 Process ("CIRP"). The CIRT Report identifies specific officers who must attend and  
20 participate in the CIRP process. *Id.* at ¶¶27-33. Prior to the CIRP, the summoned officers  
21 are allowed to view the CIRT Report. They do not receive a copy of the CIRT Report. *Id.*  
22 at ¶29.

23 CIRP is conducted in two parts. The first part is the Use of Force Review Board  
24 ("UFRB"). UFRB evaluates only the actions of the officer(s) who actually used force (in  
25 this case Lopera, Crumrine, Tran and Flores). *Id.* at ¶28. The UFRB does not involve  
26 tactical issues and does not evaluate policy. After the UFRB ends, the second part occurs.  
27 The second part is called a Tactical Review Board ("TRB"). *Id.* at ¶28. The TRB evaluates

1 the tactics employed during the officer involved shooting. The TRB evaluates the  
 2 performance of any officer involved in the scenario. **No reports are created during the**  
 3 **CIRP.** *Id.* at ¶30.

4 According to Plaintiff, CIRT “found that Defendant Flores, Tran, and Crumrine all  
 5 failed to intervene during the incident.” ECF No. 38 at p.13:1-3. This is patently false.  
 6 Initially, CIRT identified all potential policy and training violations with respect to all  
 7 involved officers. It identified failure to intervene as a potential issue and investigated the  
 8 issue with respect to Crumrine, Tran, and Flores. Kirkegard Depo. at p.49:24-p.50:12;  
 9 p.57:7-14, attached as **Exhibit F.**<sup>3</sup> After reviewing all of the available evidence, CIRT  
 10 concluded that Crumrine, Tran, and Flores did intervene. *Id.* at p.51:10-25. Thus, Plaintiff’s  
 11 unsupported representation to the contrary is false. Plus, it is obvious that Crumrine, Tran,  
 12 and Flores intervened. The video of the event show that all three officers immediately  
 13 intervened by giving orders to Lopera to stop the neck restraint and by assisting with the  
 14 handcuffing of Farmer within seconds of their arrival.

15 In short, Plaintiff’s false representation that LVMPD’s CIRT team “found” that the  
 16 officers failed to intervene is irresponsible and demonstrably false. Rather, the evidence  
 17 shows that the CIRT team identified potential training and policy issues, investigated the  
 18 issues, and then reached sound conclusions.

## 19           **B. RELEVANT PROCEDURAL AND DISCOVERY HISTORY**

20 Plaintiff Trinita Farmer is the mother the Decedent Tashii Farmer. The Decedent  
 21 and his biological children have filed a separate action against these same defendants. *See*  
 22 *Estate of Tashii S. Farmer v. LVMPD, et. al.*, 2:17-cv-01946-JCM-PAL. In the subject case,  
 23 Plaintiff alleges that the individual defendant officers interfered with her Fourteenth  
 24 Amendment right to familial relations with the Decedent. ECF No. 4 at First Claim for  
 25 Relief. In addition, Plaintiff alleges supervisory liability against defendant Crumrine and a

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26  
 27 <sup>3</sup> Casey Kirkegard was the lead CIRT investigator and gave testimony in the Decedent’s lawsuit.

1   1 *Monell*<sup>4</sup> claim against defendant LVMPD. *Id.* at Second and Third Causes of Action. In the  
 2   2 *Monell* claim, Plaintiff alleges that an LVMPD policy, custom, or practice allowed the  
 3   3 defendant officers to interfere familial relationship with the Decedent.

4                 On October 26, 2018, the LVMPD Defendants served their Initial Disclosure  
 5 Statement in this matter. The disclosure was comprehensive, identifying fifty-one (51)  
 6 witnesses and 4,667 pages of exhibits. *See* LVMPD Defendants' Initial Disclosure  
 7 Statement, attached as **Exhibit D**, without exhibits. On December 11, 2016, LVMPD  
 8 supplemented the disclosure statement and provided all body worn camera videos from the  
 9 subject incident. *See* LVMPD's First Supplemental to Disclosure Statement, attached as  
 10 **Exhibit E**, exhibits omitted. LVMPD's Initial Disclosure Statement included the entire FIT  
 11 file and the entire CIRT file – except for defendant Lopera's compelled CIRT statement.  
 12 *See* Ex. D at Exhibits 24-62; *see also* Ex. C at ¶4. Thus, except for Lopera's CIRT  
 13 statement, Plaintiff is in possession of all the factual evidence generated by CIRT and CIRP.  
 14 The only documents LVMPD has withheld are the actual CIRT Report, the Tactical Review  
 15 Board Memorandum, the Use of Force Board Memorandum, and Lopera's statement. Ex. C  
 16 at ¶2. Further, Plaintiff is aware of the CIRT and CIRP results – i.e., (1) criminal charges  
 17 were recommended against Lopera, (2) Lopera retired before his disciplinary proceedings  
 18 could be completed, (3) Crumrine was not confirmed as a sergeant and returned to his  
 19 position as a police officer, and (4) Tran and Flores were found in violation of LVMPD's  
 20 body worn camera policy.

21   **III. LEGAL ARGUMENT**

22                 Plaintiff's motion to compel requests that LVMPD produce three specific items: (1)  
 23 LVMPD CIRT Report; (2) Lopera's CIRT Statement; and (3) LVMPD's CIRP documents.  
 24 ECF No. 38 at p.1:22-24.

25  
 26  
 27   <sup>4</sup> *Monell v. Dep't of Soc. Serv.*, 436 U.S. 658 (1978).

1       It is LVMPD's understanding that Lopera is exercising his Fifth Amendment right  
 2 with respect to his CIRT statement. Therefore, LVMPD will defer to his response on that  
 3 issue. LVMPD has informed Plaintiff that it will produce the statement pursuant to a waiver  
 4 from Lopera or a court order. As a result, LVMPD's argument focuses on the CIRT Report  
 5 and the memorandums and other tangible items created during the CIRP process. The  
 6 argument regarding both items is identical and it is LVMPD's position that the deliberative  
 7 process protects their disclosure.

8           **A. THE DELIBERATIVE PROCESS PRIVILEGE**

9       The federal common law recognizes a Deliberate Process Privilege. *Federal Trade*  
 10 *Comm'n v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). The purpose of  
 11 this privilege is to enhance and support communication incidental to improving the quality  
 12 of governmental policies, procedures and practices. *Id.* citing *NRLB v. Sears, Roebuck &*

13 *Co.*, 421 U.S. 132, 150 (1975). The Deliberative Process Privilege extends to documents  
 14 which "reflect advisory opinions, recommendations and deliberations comprising part of a  
 15 process by which government decisions and policies are formulated." *Id.* citing *NRLB*, 421  
 16 U.S. at 150. The ultimate purpose of the privilege is to protect the quality of agency  
 17 decisions by promoting frank and independent discussion among those responsible for  
 18 governmental decision-making. *Warner Commc'ns*, 742 F.2d at 1161.

19       Two threshold requirements must be first met prior to proceeding to the ultimate  
 20 analysis involving a balance between the competing interests in confidentiality versus  
 21 disclosure. First, the information must be "pre-decisional" -- meaning that it must exist as a  
 22 foundational element of the deliberative process in which the material was utilized. *Id.* In  
 23 this case, the entire CIRT process and creation of the CIRT Report took place in advance of  
 24 the final decision making of the Sheriff and the subsequent officer discipline. Thus, the  
 25 CIRT Report and CIRP easily satisfy the first threshold requirement.

26       The second inquiry is whether the material is "deliberative in nature, containing  
 27 opinions, recommendations or advice about agency policies." *Id.* When the information is

1 “purely factual” and “does not reflect deliberative process,” it is not protected. *Id.* Here,  
2 there is a factual element to the CIRT Report. This factual information in the CIRT  
3 investigation is “interwoven” with deliberative material. *Id.* citing *Binion v. Dep’t of*  
4 *Justice*, 695 F.2d 1189, 1193 (9th Cir. 1983). Despite this factual overlap, the primary  
5 purpose of the CIRT Report is to critically evaluate LVMPD’s policy and training and make  
6 policy recommendations. In addition, the involved officers are not treated as passive  
7 conveyors of rote information. Rather, the involved officers are encouraged and expected to  
8 actively participate in the review process, candidly evaluating the effectiveness of their  
9 performance in the situation as well as the role of LVMPD policies which were applied and  
10 the quality of training received in advance of the encounter. Thus, although some of the  
11 information contained in the CIRT Report is factual, it is not “purely factual” and is part of  
12 the deliberative process. Still, LVMPD has voluntarily produced all of the factual evidence  
13 generated and used to create the CIRT Report. It is undeniable that due to the critical nature  
14 of the CIRT Report that it meets this second threshold requirement.

15 Once these two threshold requirements are met, a court is then instructed to analyze  
16 the material under a four part balancing test:

- 17       (1)     The relevance of the evidence;
- 18       (2)     The availability of other evidence;
- 19       (3)     The government’s role in the litigation; and
- 20       (4)     The extent to which disclosure would hinder frank and independent  
21              discussion regarding contemplated policies and decisions.

22       *Warner Commc’ns*, 742 F.2d at 1161. The following establishes that three of the  
23       four factors weigh heavily in favor of extending the Deliberative Process Privilege to the  
24       CIRT Report and CIRP.

1           **B. LVMPD'S CIRT REPORT AND CIRP DOCUMENTS ARE  
2 PROTECTED BY THE DELIBERATIVE PROCESS PRIVILEGE**

3           CIRT was specifically created with the Deliberative Process Privilege in mind. Ex.  
4 A at ¶¶3-6. LVMPD intended to create an investigatory process that fostered candid and  
5 forthright evaluation into officer involved shootings so that better policies and training could  
6 be created. It is purposefully separate from FIT so that all “purely factual” material would  
7 be available through FIT, but all policy formulation information will remain privileged.  
8 Here, LVMPD has made all factual evidence/information created by both FIT and CIRT  
9 available to Plaintiff. Ex. C at ¶3. The only information Plaintiff is missing is LVMPD’s  
10 critical evaluation of: (1) LVMPD’s policies and procedures, (2) the tactics used in this  
11 matter, (3) recommendations for future policies and training, and (4) Lopera’s CIRT  
12 Statement.

13           **1. Prong 1: Relevance of the Evidence**

14           Plaintiff takes the simple position that CIRT Report is relevant because it  
15 summarizes and evaluates factual evidence obtained during the investigation into the death  
16 of the Decedent. ECF No. 38 at p.9:7-10. It is clear that Plaintiff does not understand the  
17 Deliberative Process Privilege as she takes a rather simplistic approach. According to  
18 Plaintiff, the Ninth Circuit has “expressly held that facts and evidence are not protected by  
19 the Deliberative Process Privilege.” *Id.* at p.9:12-17. This is why LVMPD voluntarily  
20 produced all facts and evidence that it compiled during the investigation – to comply with  
21 the law and protect the deliberative nature of the CIRT Report. Plaintiff has all of the facts  
22 and information necessary to create her own CIRT Report. All LVMPD is seeking to  
23 protect is pre-decisional information that is deliberative in nature.

24           Also, LVMPD’s post-incident evaluation of its policies and procedures is not  
25 relevant. This case is about constitutional violations – not policy violations. The issue is  
26 whether the defendant officers violated Plaintiff’s constitutional rights. It is not about  
27 internal policies that are more restrictive than the Constitution. *See Scott v. Harris*, 127

1 S.Ct. 1769, 1773 n. 1 (2007) (it is “irrelevant to our analysis whether [defendant] had  
 2 permission to take the precise actions he took); *Davis v. Scherer*, 468 U.S. 183, 193-96  
 3 (1984) (It is settled law that a violation of departmental policy does not equate with  
 4 constitutional unreasonableness); *Abney v. Coe*, 493 F.3d 412 (4th Cir. 2007). And, any  
 5 complaints, discipline, or criticism of the involved officers are remedial measures taken after  
 6 the incidents are inadmissible as subsequent remedial measures. See Fed.R.Evid. 403; see  
 7 also *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1417-18 (9th Cir. 1986) (internal affairs  
 8 evidence regarding the subject incident is inadmissible at trial because the investigation and  
 9 results constitute subsequent remedial measures prohibited by Fed.R.Evid. 403).

10 In short, Plaintiff is in possession of all “relevant” evidence and materials. LVMPD  
 11 has provided all of the information it accumulated with respect to the subject incident. If  
 12 this Court were to order production of the CIRT Report and CIRP documents, it is almost  
 13 certain that LVMPD investigators will be more cautious and less candid when formulating  
 14 opinions and criticisms in future cases.

15 **2. Prong 2: The Availability of Other Evidence**

16 LVMPD has produced all evidence used to create the CIRT Report – except  
 17 Lopera’s CIRT statement. The reason is because LVMPD recognizes that factual evidence  
 18 could potentially be admissible. In addition, Plaintiff is well aware of the policy changes  
 19 that LVMPD made as a result of the subject incident (Ex. D at Exhibit #20) and the  
 20 discipline the individual defendant officers received.

21 **3. Prong 3: The Government’s Role in the Litigation**

22 LVMPD is a defendant in this litigation.

23 **4. Prong 4: Hindrance of Frank and Independent Discussion**

24 The final (and most important) prong of the Deliberative Process Privilege’s four  
 25 part test is whether disclosure of the CIRT Report and CIRP documents will hinder future  
 26 frank and independent discussion of critical incidents. The answer to that question is  
 27 “absolutely.” CIRT was created for the sole purpose of creating a privileged document that

1 allows LVMPD to self-critically analyze and evaluate itself for the purpose of bettering its  
 2 policies, procedures, and/or training. If disclosure of the CIRT report is compelled, the  
 3 damage to the objectives of the CIRT process would be irreparable. If the CIRT  
 4 investigators and involved officers recognize that the critical and candid opinions they  
 5 include in their reports or statements may eventually become public and part of a civil suit, it  
 6 is likely that the involved officers will act more cautiously with their opinions. In other  
 7 words, the CIRT officers and involved officers will likely become less forthcoming and less  
 8 candid with their assessments. Disclosure of the CIRT report will undoubtedly have a  
 9 chilling effect upon the admirable goals of the CIRT process. The CIRT procedures for  
 10 policy improvement at LVMPD are delicate and depend upon trust and candor. Once these  
 11 reports are made public, the process will be permanently altered to its detriment.

12           **5. Deliberative Process Conclusion**

13           For the above reasons, it is respectfully submitted that the CIRT report is protected  
 14 by the Deliberative Process Privilege and is considered privileged information. Further,  
 15 applying the balancing test of *Warner Comm'cn*, it is clear that LVMPD's interest in  
 16 maintaining the privileged nature of the CIRT report substantially outweighs the Plaintiff's  
 17 interest in disclosure. For this reason, the court should extend the Deliberative Process  
 18 Privilege to the CIRT report.

19           **C. KENNETH LOPERA'S CIRT STATEMENT**

20           LVMPD recognizes that Kenneth Lopera potentially has a Fifth Amendment right  
 21 with respect to his CIRT statement. Therefore, LVMPD defers to Officer Lopera's motion  
 22 on this issue.

23           **IV. CONCLUSION**

24           Based upon the above, LVMPD respectfully requests that this Court issue the  
 25 following order:

26           (1) Plaintiff's motion to compel LVMPD's CIRT Report is denied as it is  
 27 protected by the Deliberative Process Privilege; and

1                   (2) LVMPD's use of force board decisions and memorandums are protected by the  
2 Deliberative Process Privilege.

3 Dated this 3 day of January, 2019.

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## CERTIFICATE OF SERVICE

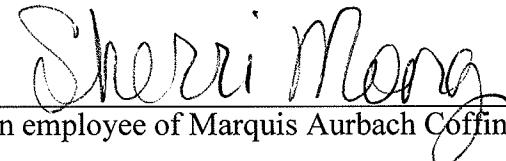
I hereby certify that I electronically filed the foregoing **DEFENDANT LVMPD'S  
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DEFENDANT LVMPD'S  
(1) CIRT REPORT; (2) CIRT STATEMENT OF KEN LOPERA; AND (3) REVIEW  
BOARD MINUTES AND DOCUMENTS** with the Clerk of the Court for the United  
States District Court by using the court's CM/ECF system on the 3<sup>rd</sup> day of January, 2019.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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9  
10  I further certify that some of the participants in the case are not registered  
11 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid,  
12 or have dispatched it to a third party commercial carrier for delivery within 3 calendar days  
13 to the following non-CM/ECF participants: n/a

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16 \_\_\_\_\_  
17 an employee of Marquis Aurbach Coffing  
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